

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT MASSACHUSETTS**

**IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION**

**MDL No. 2419**

**Docket No.: 1:13-md-02419-RWZ**

**THIS DOCUMENT RELATES TO:**

**Armetta, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14022-RWZ**

**Bowman, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14028-RWZ**

**Davis, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14033-RWZ**

**Dreich, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14029-RWZ**

**Farthing, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14036-RWZ**

**Kashi, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14026-RWZ**

**Torbeck, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14023-RWZ**

**Handy, et al. v. Box Hill Surgery Center,  
LLC, et al.  
No. 1:14-cv-14019-RWZ**

**NON-PARTY BARBARA WAGNER’S MOTION FOR PROTECTIVE  
ORDER REGARDING PLAINTIFFS’ SUBPOENA AND AMENDED  
NOTICE OF DEPOSITION *DUCES TECUM***

Non-party Barbara Wagner, by and through her attorneys, R. Scott Krause, Ashley L. Marucci and Eccleston and Wolf, P.C., hereby moves, pursuant to Federal Rule of Civil Procedure 26(c), for a Protective Order limiting the scope of discovery sought by Plaintiffs in the above-referenced cases in their Subpoena and Amended Notice of Deposition *Duces Tecum* (see Docket No. 2927, attached hereto as Exhibit A).

As discussed in further detail in the accompanying Memorandum of Law, which is expressly incorporated as if fully set forth herein, Ms. Wagner’s deposition is currently scheduled for June 28, 2016. After undersigned counsel received a copy of the Subpoena and Amended Notice of Deposition *Duces Tecum* via email on June 14, 2016, it became apparent that the scope of requested information and documents vastly exceeds the bounds of what may be relevant and probative in Plaintiffs’ cases against Defendants Box Hill Surgery Center, LLC, Ritu Bhambhani, MD and Ritu T. Bhambhani, MD, LLC (the “Box Hill Defendants”). The majority of topics listed in Attachment A to the Amended Notice of Deposition *Duces Tecum* specifically relate to policies and procedures utilized by Harford County Ambulatory Surgical Center, LLC (“HCASC”), Ms. Wagner’s current employer, for ordering methylprednisolone acetate (“MPA”) from New England Compounding Center (“NECC”) (see Exhibit A).

Although HCASC is not a party to the MDL proceedings, there are several cases filed against it in the Circuit Court for Harford County, Maryland, involving precisely the same issues of allegedly tainted MPA from NECC administered to the Patient Plaintiffs. Notably, Plaintiffs’ counsel in the *Box Hill* cases represent several Plaintiffs in cases filed against HCASC and,

accordingly, they are aware of the parties and issues involved in those cases. The cases pending against HCASC in Maryland State Court are in the very early stages of litigation, and no depositions of parties, fact witnesses or experts have taken place. The parties are currently awaiting issuance of a Global Scheduling Order by the Circuit Court for Harford County to govern the course of discovery.

For the reasons more fully set forth in the accompanying Memorandum of Law, Plaintiffs' request to take the deposition of Ms. Wagner as a fact witness in the *Box Hill* cases, in an effort to learn information and obtain documents that are focused upon and central to HCASC's defense of the cases against it in another jurisdiction, is unfair and prejudicial. Although undersigned counsel engaged in efforts to determine Plaintiffs' counsel's support for their contention that the requested documents and information are relevant to their claims against the Box Hill Defendants, and to possibly resolve the discovery dispute, those efforts were unsuccessful. (See Exhibits B-C).

**WHEREFORE**, Non-Party Barbara Wagner respectfully requests that this Court issue a Protective Order limiting the scope of discoverable information and documents sought by Plaintiffs in her deposition, and requests such other and further relief as this Court deems just and proper.

Respectfully submitted,

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*Attorneys for Non-party Barbara Wagner*

**CERTIFICATE OF SERVICE**

This will certify that true and accurate copies of the foregoing Non-Party Barbara Wagner's Motion for Protective Order Regarding Plaintiffs' Subpoena and Amended Notice of Deposition *Duces Tecum* and supporting Memorandum of Law were served on all counsel of record by virtue of the Court's electronic filing system this 23rd day of June, 2016.

/s/ Ashley L. Marucci

Ashley L. Marucci